

APPEAL NO. 022557
FILED NOVEMBER 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 11, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that she did not have disability because she did not sustain a compensable injury; and that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed to timely notify the employer of the alleged work-related injury pursuant to Section 409.001. The claimant appeals on sufficiency of the evidence grounds, and attaches her chronology of events and several medical records to her appeal. The carrier responds, objecting to any consideration of new evidence, and otherwise urging affirmance.

DECISION

Affirmed.

The hearing officer incorrectly stated that the employer received the first notice of the claimed work injury on March 27, 2000. We correct this obvious administrative error, and change that date to March 27, 2001.

Attached to the claimant's appeal were several documents that were not offered into evidence at the hearing, as well as duplicates of some documents that were offered into evidence. Generally, the Appeals Panel does not consider documents not offered into evidence at the hearing and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with those documents attached to the appeal which were neither offered or admitted into evidence at the hearing.

There was conflicting evidence presented on the disputed issues in this case. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna

Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We note that the hearing officer specifically commented in the Statement of the Evidence that the claimant was not credible, that her testimony was not persuasive, and that the mechanics of the injury, as related by the claimant, is not plausible. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the factual findings of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge